GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute —Industrial Disputs between the Workmen and the Management of Bharath Beedi Works, Karkal, Mangalore (South Kanara District.)

Award of the Labour Court, Mangalore—published.

Read the following Papers :

(1) Letter No. ID/4/70/71-72 dated 30th April 1971 from Sri Mohd. Hameeduddin Khan, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated the 30th day of April, 1971.

Reference (ID)(LCM) No. 4 of 1970.

Present :

Mohd. Hameeduddin Khan, B.Sc., L.L.B., ... Presiding Officer

Between

The workmen represented by the Secretary. Beedi Mazdoor Sangh. Felix Pai Bazaar. Mangalore. ... *I Party*

and

The Management of Bharath Beedi Works, Karkala, Mangalore (South Kanara District) ... *II Party*

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of Bharath Beedi Works, Karkala, Mangalore, referred it under Section 10 (1) (c) of the Industrial Disputes Act, 1947 *vide* Order No. FCL 10 LLD 70 dated 21st February 1970 to this Labour

Court at Mangalore for adjudication on the following points of dispute :—

"Are the workmen of Bharat Beedi Works, Karkala, South Kanara District justified in demanding that the rate for wrapping of beedies be enhanced to Rs. 8 per one lakh beedies ?

If not, to what relief are they entitled " ?

2. On receipt of the reference it was registered as Reference (ID) (LCM) No. 4 of 1970 on the file of this Court, and notices were issued to both the parties to file their claim and counter statements. The first party was represented by Sri P. Ghate, and the second party was represented by Sri K. S. Rao. On 11th March 1970 the claim statement of the first party was filed, and on 28th March 1970 the counter statement of the second party was filed. In view of the pleadings, the following additional issues apart from the points of dispute were framed on 28th March 1970 :—

1. Whether the second party is getting done wrapping and labelling work of beedies mostly on piece-rate basis paying at the rate of Rs. 6 for labelling and wrapping of one lakh beedies ?
2. Whether the demands of the first party workmen for enhancement of the rate from Rs. 6 to Rs. 8 for wrapping and labelling of one lakh of beedies is justified ?
3. Whether the workers of the second party are covered by the settlement dated 1st June 1968 which is valied upto 31st October 1970? If so, whether the reference of this dispute is bad, invalid and illegal ?
4. What award ?

After taking many adjournments on behalf of the second party one witness Sri Pundalik V. Shenoy was examined as M. W. 1, On behalf of the first party four witnesses were examined *viz.* W. W. 1 Smt. B. Sharadha, W. W. 2 Sri K. Padmappa Devadiga, W. W. 3 Sri Kantilal Patel and W. W. 4 Sri Shekhar, and two documents were got marked as Exhibits W 1 and W. 2. This is to be noted that after the closure of the evidence of the first party an application was filed on 17th March 1971 by the second party to recall the witness M. W. 1. In the application it is stated that the burden of proving that the first party workmen were entitled to receive the enhanced rate of wages as claimed in the claim

statement was on the first party, and it was for the first party to lead evidence initially. However, the second party in view of the expenditious disposal of the dispute led the evidence by examining M. W. 1, even before the first party examined any of its witnesses in accordance with the directions of the Court. On account of the nature of the evidence subsequently led by the first party and in the interest of justice, the second party prays that it be allowed to re-call its witnesses and lead evidence by way of rebuttal. On behalf of the first party objections, statement was filed on 22nd March 1971 wherein it is stated that the second party of its own accord led evidence first in the above dispute. After the second party closed its evidence, the first party adduced evidence. At the time of closing its evidence, the second party did not reserve its right for rebuttal evidence. if any, when the first party closed its evidense this Court posted the case for arguments. Even at that stage the second party did not state that it had rebuttal evidence. It quietly accepted the Court's order posting the case for arguments. It is stated that in the application the second party has not disclosed the reason for re-calling the witness except saying that on account of the nature of evidence led by the first party the second party wants to examine its witness. It is stated that this vague plea cannot be accepted. Lastly it was prayed that the application may be rejected with costs. After hearing the arguments of the learned representatives for the parties, this Court allowed the application of the second party to re-call the witness M.W. 1 and examine him to rebut the evidence of the first party on the points of dispute and the additional issue No. 2. So on the hearing dated 8th April 1971 M.W. 1 was re-called and examined further. Sri P. Ghate stated on that day that he would summon some documents from the second party in view of the evidence of M.W. 1 recorded that day. He was allowed to file application to summon the documents. On 13th April 1971 Sri K. S. Rao produced the payment of wages Register as called for by the first party. The argument of Sri P. Ghate was heard on 13th April 1971, and on 14th April 1971 the reply argument of Sri K. S. Rao was heard.

3. The case of the first party as per the claim statement is that the second party is one of the biggest beedi manufacturing concern in the State. They are rolling about two crores of beedies per day. The second party which is a partnership concern is an affluent undertaking. The manufacture process in the beedi industry consists of wrapping and labelling the rolled beedies. At

present the second party is getting this wrapping and labelling work done mostly on piece-rate basis and paying at the rate of Rs. 6 per labelling and wrapping one lakh beedies. This rate was fixed about three years ago under a minimum wages notification by the State Government. It is stated that some of the smaller concerns than the present second party are paying higher rates than Rs. 6. It is stated that the demand of the first party wrokmen is that the above rate of Rs. 6 be enhanced to Rs. 8 for wrapping one lakh of beedies. It was prayed that after due enquiry the second party may be called upon to meet the above just demand which is very fair and reasonable.

4. In the rejoinder statement, *i.e.*, counter statement, of the second party it is stated that the management is a partnership concern manufacturing and selling of beedies in South Kanara, Mysore state. It was denied that the beedies are wrapped and labelled on piece-rate basis. It was denied that the labelling and wrapping workmen are paid at Rs. 6 for labelling and wrapping one lakh of beedies. It is stated that in fact the workmen employed by the second party management are paid on monthly basis their wages and increments or enhancement of monthly wages are covered by the settlement dated 1st June 1968 which is valid upto 31st October, 1970. The settlement is between the same parties. Apart from the workers covered by the said settlement it is stated that there are no other workers employed in wrapping and labelling. Since the said workers are covered by the said settlement, the reference of this dispute when the said settlement, subsists is bad, invalid and illegal. It is further stated that without prejudice to the above the wrapperers and labellers are paid fair wages by the management and the allegations made by the union is denied. It is further stated that without prejudice to what is stated above there is no reason why the rate of labelling should be increased. There is no rational basis for any increase. This dispute is raised only to harass the management. It is an unfair labour practice employed by the Sangh to refer the dispute in respect of those whose wages and increments are covered by the settlement which is valid upto 31st October 1970. It is stated that the allegations made by the Sangh in their claim statement are denied. Lastly it was prayed that this Court may reject the reference and the demand with costs. In view of these pleadings, the afore-said additional issues apart from the points of dispute were framed on the hearing dated 28th March 1970.

5. Sri P. Ghate, the learned representative for the first party, argued at length taking me through the entire evidence of both the parties. He argued that this is a dispute raised by the workmen of Bharath Beedi, Mangalore demanding payment of Rs. 8 per lakh of beedies labelled and wrapped as they are now being paid Rs. 6 only. The first party has led evidence to bring on record the materials showing what relevant rates are prevailing in other beedi industries for labelling and wrapping. First party examined four witnesses. According to the evidence of W.W. 2, Secretary of the Beedi Mazdoor Sangh, and who is also a worker in P.V.S. Beedies, Mangalore, he has enough knowledge of the rates prevalent in beedi industries. In Ganesh Beedies, the rate is Rs. 3-08 for 44. thousand beedies, *i e*, Rs. 7 per lakh plus D.A. of 77 paise per day. The piece-rate difference works out to Rs. 7 per lakh excluding D.A. of 77 paise. According to his evidence they are given 25 per cent bonus. Telephone Beedies as per Exhibit W.1(a) pay at Rs. 6-50 per lakh of beedies labelled and wrapped. They are paying 33⅓ per cent of bonus, *i e*, Sadhu Beedies according to the deposition of W.W. 2. The Telephone Beedies are paying at Rs. 7 per lakh of beedies plus bonus 12½ per cent He argued that W.W. 3 who is the manager of Telephone Beedies deposed that they are paying Rs. 7-50 to the contractor. This witness however shewed his ignorance as to what rate the contractor is paying to the workers working under him. He argued that W. W. 4 is a workers in Telephone Beedies. He deposed that he is paid at Rs. 7 per lakh and bonus is paid at 12½ per cent. He contended that the statement of W. W. 4 is similar to the statement of W.W. 2 showing the rate of labelling to be Rs. 7 but according to W.W. 3 they are paying Rs. 7 50 to the contractor. He argued that it could be presumed that the contractor in this case gets 50 paise as his commission or profit paying Rs. 7 per lakh of beedies to the workers working under him. He argued that in P.V.S. Beedies the labelling and packing workers are different, according to W.W. 2. He argued that according to W.W. 2 in P.V.S. Beedies there are monthly paid employees and their salary varies from Rs. 80 to Rs. 134 in respect of labelling workers and in case of packers Rs. 107 to Rs. 190. The labellers are required to label 80 thousand beedies each for a day and the packer has to pack each 2 lakh of beedies a day. In P.V.S. Beedies they are getting 50 per cent bonus every year. He argued that W.W. 1 who is a worker in Bharath Beedies has stated that she gets Rs. 6 for wrapping and labelling one lakh of beedies, and that the workers of Bharath

Beedies are not getting any bonus at all. He contended that the first party has led sufficient evidence to justify its claim for Rs. 8 per lakh of beedies for labelling and packing. The demand was made for the piece-rated workmen doing labelling and packing. The stand taken by the second party is that Bharath Beedies are not employing any piece-rated employees and to prove that, they have examined M.W. 1. He argued that M.W. 1 has admitted at a latter stage on 8th April 1971, that in Karkal there are three or four labellers, but in his earlier cross-examination he showed his ignogance about this. He admitted that they are getting labelled beedies on contract basis from individual outside workers at Rs. 6 per lakh. He argued that it is evident from the evidence, on the whole that a small quantity of beedies are wrapped and labelled by monthly rated employees of Bharath Beedies, and greater percentrage of beedies are labelled and wrapped by outside workers on contract basis. He argued that the question to be considered here is, as to whether the outside workers who are doing labelling and wrapping work in their houses could be called as workmen of the second party or not? On this point he referred to the evidence of W.W. 1, and contended that it is determined that they are workers. According to her all materials are supplied by Bharath Beedies and this fact is admitted by M.W. 1 also. This fact goes to show that the outside workers are not independent contractors but are workmen under the second party. From the evidence of W.W. 1 it is also proved that she actully works. According to her a supervisor of the second party supervises her work though not daily yet periodically. He cited the ruling reported in 1957 (I) LLJ 477 in support of his contention. He argued that though the outside workers are not working in the premises of the second party, yet packing and labelling should be according to the specifications fixed by the second party, and this fact is admitted by M.W. 1 also at page 6 of his deposition. He argued that she has also stated that they have to apply for leave. Thus there is a sort of discplinary control of the second party management over the outside workers as according to her if they do not deliver the labelled and packed beedies in time they are not given work for a week. He argued that according to the evidence of the evidence of W.W. 1 it is gathered that she has to work for about eight hours every day All the essential factors to bring one under the definition of workmen are present in this case, in view of the evidence of W.W. 1. So the outside workers should be considered as workmen uder the second party, and their demand must be accepted as justified. Though the second party says that

they are getting this work done by contracts, yet no evidence was produced in this respect. The Register produced by the second party called upon by the first party to be produced also shows that payment of wages are made weekly. At page 113 the name of B. Sharada is found and her signatures are also there for every week. The first party has substantially proved its case. Therefore, an award must be passed in favour of the first party.

6. The contention of Sri K. S. Rao, the learned representative for the second party, is that the supervisory control over the outside workers was not made out by the first party. The reference does not disclose or indicate that the dispute raised refers to these persons who are working at their houses. The claim statement is still vague on this point. It is not stated in the claim statement also that their claim is with regard to those persons who are working at their houses. He cited the rulings reported in 1957(I) LLJ 477, 1957 (I) LLJ SC 645, 1958 (II) LLJ SC 252, 1961 (I) LLJ SC 549 and 1962 (I) LLJ SC 119 in support of his argument that the persons who do packing and labelling at their houses under the contractors do not become workmen under the second party, and requested that as such the reference and demand should be rejected. He argued that the evidence produced by the second party indicates that there are labellers and wrappers on monthly wages in the factory of the second party. The entries at page113 of the Payment of Wages Register are in the name of Seshu Shetty, Alke Saheb's Compound. This shows that B. Sharada is working under Sheshu Shetty and that Sheshu Shetty is her father, as she has shown her father's name as Seshu Shetty in her deposition. He argued that these entries prove that she is not a workman of the second party. At page 3 she has stated there is no specific time to fetch the beedies. He contended that to prove relationship of master and servent it must be proved that the persons in question are persons employed by the second party, in view of the ruling of the Supreme Court reported in 1961 (I) LLJ 549. But there is no such evidence in this case. Therefore the argument of the other side that the outside workers are workmen under the second party must fail. He lastly requested that the reference and the demand may be rejected with costs. This is to be noted here that no arguments were advanced on either side on the additional issue No. 3.

7. I have given my anxious consideration to the able arguments advanced on either side, and now I proceed to consider

the first part of the points of dispute, and the additional issue No. 1. The first part of the points of dispute suggests that there workmen of Bharat Beedi Works, Karkala, South Kanara District who are demanding the rate for wrapping of the beedies to be enhanced to Rs. 8 per lakh of beedies. Thus it suggests that they are workers on piece-rate basis working under the second party. But from the evidence of M.W.1, Sri Pundalik V. Shenoy, who is the manager-cum-accountant of Bharath Beedi Works, Karkala, it is found that the wrappers and labellers employed by the management are paid on monthly time-rated basis. They are not employing anybody on piece-rated terms as wrappers and labellers. They do not have any piece-rated workers. In cross examination also he has stated that they have not employed any beedi rollers. They have come wrappers and labellers but he cannot give the exact number of them. He cannot say how many wrappers and labellers are there in Mangalore Centre, and similarly in Karkala. He denied the suggestion stating that this is not correct to state that the beedies that are wrapped and labelled in Mangalore are paid on piece-rate basis. They are paying monthly wages to the wrappers and labellers of the Mangalore centre also and not paying on piece-rate basis. He has stated that they are not paying on piece-rate basis to the four women who were sitting in Court that day, i.e., on the date of his examination, *viz.*, Nagamma. Shantha, Sharadha and Seetha as wrappers or labellers. His cross-examination which was made on 14th October 1970 was deferred to 16th October 1970, and on 16th October 1970 in further cross-exmination he has stated that monthly rated wrappers and labellers are in Karkala centre of their Beedies and in Mangalore centre also there are monthly paid wrappers and labellers. He does not know whether there are monthly paid wrappers and labellers in other centres of theirs. There are several other centres apart from Mangalore and Karkala centres, where their beedies are wrapped and labelled. He does not know how many workers they have for wrapping and labelling beedies who are paid monthly salary at Karkala and Mangalore centres. He does not know their names also, but he can give the names of a few of them. The factory register contains the names of monthly rated wrappers and labellers. He has stated that this is not true to suggest that in their Mulky centre the wrappers and labellers are wrapping and labelling the beedies on piece-rate basis. He has stated that the wrapping and labelling is done on contract basis at Mulky centre. They are paying minimum wages to them on contract basis also.

In Mangalore centre also they are paying minimum wages to the wrappers and labellers on contract rate. They are paying wages on one lakh beedies on contract basis also at the rate of minimum wages. That is not piece-rate but contract rate, In re-examination by Sri K. S. Rao he has stated that the workers, who are wrapping and labelling beedies on contract basis do not work by sitting in their centres, but they work at their houses, and bring the wrapped and labelled bundles of beedies to their centres. In none of their centres there is any worker doing wrapping and labelling on piece-rate by sitting in their centres. In his further examination on 8th April 1971 when re-called after the evidence of the first party was over, he has stated that wrapping and labelling of beedies is done in the factory of the second party also. They pay them monthly wages. They give labelling and wrapping to outsiders individally to do the wrapping and labelling work at their respective houses. They do not supervise the work of outsiders. They pay them on contract at certain amount per lakh of beedies. If the wrapping and labelling is not done according to their specifications they do not give any work to them. They are not entitled to leave They do not give them leave. They have no right for leave. They give beedies for wrapping and labelling between 11 to 12 A.M. and the next day they return the labelled and packed beedies at the same time. They do not know who are all labelling and wrapping beedies, but the contractor delivers the wrapped and labelled beedies to them. Their maistry does not visit to check the work of the contractor They have no control over the contractors. E. Sharada who has given evidence on behalf of the first party does not work under them nor as contractor. . In cross-examination on this statement he has stated that in Karkal in their factory there are labellers. There are three or four of them. They are paid on monthly rated basis.. Except these three or four workers in Karkala factory there may not be any labellers, as he is not supposed to have information of all the branches. He has no information to say definitely that there are no labellers workers except in Karkala factory. They are paying at the contract rate of Rs. 6 per lakh of beedies for labelling and wrapping. The minimum piece-rate wages may be Rs. 6 per lakh of wrapping and labelling beedies. In cross examination at page 6 he has stated that all the materials that are required for wrapping and labelling beedies they supply to outsiders, i.e., to those who wrap beedies. Their own workers deliver these materials at their homes. Similarly the labelled and wrapped beedies are brought from their homes

by their workers. They are not giving directions to do the work, how to label the beedies to outsiders. They have a specific system for wrapping and labelling and according to their specifications they have to wrap and label their beedies. They pay wages to them daily if they demanddaily payment or they pay wages weekly on their request. He has stated that one Mr. Baliga who is a member of their staff also makes payment of wages. The signature of these labellers are taken in a book while making payments to them. He has stated that it is not true to suggest that because of these valuable goods being supplied to outside labellers, the company keeps a supervision over their labellers. He stated that it is not true to suggest they send their to the homes of the labellers to supervise their work. S. Sharada's name is not entered in their payment register. It is not true to suggest that the outside labellers have to inform them previously if they are not in a position to work on any day. He has stated further that it is not true to suggest that he is deposing that they are giving work to the outside labellars on contract basis only to escape their liability. Thus, on the whole, from the evidence of this witness, this fact only is ascertained that the Bharath Beedi Works have no workers doing wrapping and labelling of their beedies on piece-rate basis, but that a part of the work of labelling and wrapping of the beedies is done by the few employees who are employed by the second party for this work on a monthly paid basis, and that besides this work being got done by these monthly paid workers. the second party is getting done this work of packing and labelling of their beedies by outsiders also on contract basis. To prove that such outside workers are not their workers he denied to have any supervision of theirs on the work of the outside workers and denied also the outside workers having any title to leave or right for any leave. He further deposed that they have no control over the contractors.

8. No evidence was let in on the side of the first party to establish that there are workers employed by the second party on piece-rate basis to perform this work of packing and labelling of the beedies. and that such persons have put forth this demand as regards the rate for wrapping and labelling of the beedies to be enhanced to Rs. 8 from Rs. 6 per one lakh of beedies. Evidently there being no workmen under the direct employment of the second party who can be said to be performing the work of wrapping and labelling of the beedies on piece-rate basis, the

demand itself becomes untenable. Because the demand which is contained in the first part of the points of dispute does not indicate or disclose that this relates to such of the persons who are working at their houses as labellers and wrapperers, and that they fall under the definition in of workman under the second party. The claim statement also is silent in this respect. But by the evidence of W. W. 1, Smt. B. Sharada, it was tried to be shown that the persons who are working at their houses are also workmen of the second party doing wrapping and labelling of beedies on piece rate basis, i.e., at the rate of Rs. 6 per lakh of beedies. This is to be remarked here that if the present demand had been made by such persons claiming themselves to be workmen of the second party, then such outside workers would have been also members of the first party union and raised such a collective dispute, but there is no material to establish the right of such outside workers to claim piece-rate of wages for wrapping and labelling of beedies to be enhanced to Rs. 8 per lakh of beedies. However W. W. 2, Sri K. Padmappa Devadiga, who has shown himself to be the Secretary of the Beedi Mazdoor Sangh, Mangalore, has tried to show in the deposition in the examination-in-chief that the employees of Mangalore Ganesh Beedi Works, Bharath Beedi, Telephone Beedies, P. V. S. Beedies and Sadhu Beedies are members of their Sangh, and in cross-examination at pages 2 and 3 stated that in Mangalore there are 150 workers who do their labelling and paking work at home. There are 75 of them as members of their Shangh. But at the same time he stated that he has not verified the figures of 150 by going to the company. Mr. Damodhar Pai, Managing partner, did not give it to him in writing that there are 150 workers at Mangalore. He stated that because he remembers that he told him so about 150 workers he says there are 150 workers. But no Register of the said sangh was produced to substantiate that seventy five of such outside workers are members of the said Sangh. In the absence of any documentary evidence, the oral testimony of W. W. 2 as to such seventy five outside workers of Bharat Beedies being their members cannot be given any weight, and that apart such was not the case put forth in the claim statement nor does not reference indicate that the present demand was made by such outside workers who are doing packing and labelling of Bharath Beedies. That being the position, the contention of Sri K. S. Rao in this respect which is indicated above holds good to treat the reference to be not maintainable there being no workmen employed by thesecond party to do packing and labelling of beedies on piece-rate basis.

However, in order to prove this stand which was taken in evidence only the first party workman Smt. B. Sharada, W. W. 1, has tried to state that she is the worker of Bharath Beedi Works doing the labelling of beedi work. She has stated that she does the labelling work now at home. The second party concern supplies the beedies for labelling. The beedies are sent to her house in their lorry. Along with the beedies the company also supplies labels, wrappers, paste, gunny bag and jute thread. Except for the jute thread the other articles are supplied daily to her. The jute thread is supplied once a week. Her work consists of first labelling the bundles of beedies, packing them in bundles, then tying the bundles, and putting them inside the gunny bags, tying the mouth of the gunny bags and keeping them ready for delivery when again the lorry comes. She has stated that the company's lorry comes to her house to take delivery of the packed beedies. Their work should be finished before the lorry comes to take delivery. If by the time the lorry comes to take delivery of the packed beedies, the work is not finished then they will not give beedies for labelling any further. She stated that they have to perform the work according to the instructions of the company. Once a week a supervisor from the company comes to supervise their work. If the work is not performed as per the instructions of the company, then they will not be supplied beedies for about a week. If the labelling and wrapping of beedies is not proper, then they ask them to do it again properly. They are paid at the rate of Rs. 6 per one lakh of beedies labelled and wrapped. Their wages are paid at the office of the company on every Thursday. When they require leave they have to submit a leave application a week in advance to the company. They cannot get the work done with the help of others, but they themselves will have to perform their duties. There are several workers who are working like her labelling the beedies at their respective houses. She has not executed any written agreement that she is doing the the work as an independent contractor. No other workers have also given such agreements. In other companies the wages for labelling the beedies are more than what are paid to them. Their demand is that they should be paid at the rate of Rs. 8 for one lakh of beedies.

9. It is a fundamental principle of law that the case or right should first be stated and then it should be proved, *i. e.*, evidence at variance from the pleadings of the parties cannot be accepted or looked into. But here neither in the reference nor in the

claim statement it is averred specifically that the outside workers who are doing the labelling and wrapping of the beedies of the second party are workers employed by the second party, and that their demand to enhance the rate of labelling wrapping of one lakh of beedies from Rs. 6 to Rs. 8 should be held justified and granted. However, overlooking this aspect of the case I will now proceed to considered as to whether such workers, who are doing the packing and labelling of beedies at their houses, can be treated as workmen under the second party. If this question is answered in the affirmative, then, the next question that will arise for consideration would be as to, whether the demand of enhancing the piece-rate for packing and labelling of beedies by such outside workers to Rs. 8 per one lakh of beedies. is justified or not, having regard to the piece-rates for packing and labelling of one lakh of beedies prevalent in other similar comparble concerns of Beedi Industry in South Kanara District.

10. Now I advert first to the question as to. Whether such outside workers possess the attributes to be treated as workmen of the second party. To determine the relationship of master and servant, *i. e*, employer and employee between the second party and such outside workers, it would be necessary to bear in mind the principles laid down in the verious relevant authorities on this point. Sri P. Ghate has relied upon the ruling reported in 1957 (I) LLJ 447, and Sri K. S. Rao also has relied upon the same ruling and has also cited other rulings which have been referred to in the earlier part of the award and which will be considered presently.

11. In 1957 (I) LLJ SC 477 (Dharangadhra Chemical works, Ltd., v. State of Saurashtra and others the Supreme Court held that—

> "The principles according to which the relationship between employer and employee or master and servant has got to be determined are well settled. The *prima facie* test which applied in order to determine the relationship is the existence of right of control in respect of the manner in which the work is to be done. There is a distinction between a contract for service and a contract of service. In the first case the master can order or require what is to be done while in the second case he cannot only order or require what is to be done but how it shall be done. The nature or extent of

control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by the very nature incapable of precise definition. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work, there was due control and supervision by the employer.

It is impossible to lay down any rule of law distinguishing the contract of service and contract for service. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the service by the person contracting for them, the stronger the grounds for holding it to be a contract of service and similarly the greater the degree of independence of such control, the greater the probability that the services rendered are of the nature of professional service and that the contract is not one of service.

Further the fact that the persons so engaged are paid on piece-rate basis and that they could employ their own labour and pay for it could not be considered to be decisive factors to hold them as independent contractors when the employer had power of supervision and control at all stages of the work from beginning to end.

There is abundant authority that a person could be a workmen even though he is paid not per day but the job. A person who agrees himself to work and does so work and is therefore a workman does not cease to be such by reason nerely of the fact that he gets other persons to work along with him and that these persons are controlled and paid by him. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has. then he is a workman, and the fact that he takes assistance from other persons would not affect his status.

Where or not in any given case the relation of master and servant exists is purely one of fact".

The facts of that case were that Agarias engaged by a salt company to work on the plots of land to manufacture salt were, as per the agreement, under the General supervision and control of the officers of the company at all stages of manufacture

from beginning to end. In the circumstances they must be held to be "workmen" within the meaning of S. 2 (s) of the Industrial Disputes Act and not as independent contractors even though they had no fixed hours of work. In view of the facts of that case, the Supreme Court held that—

> "The facts of that they were paid on piece-rate basis and that they could employ others and pay them could not be considered to be decisive in holding them as independent contractors".

However, the principle laid down in this ruling is liable to be followed for answering the point in question.

12. In 1958 (II) LLJ SC 252 (Chintaman Rao and another State of Madhya Pradesh) it was held that—

> "The concept of employment involves three ingredients: (1) employer, (2) employee and (3) the contract of employment. The employer is one who employs, *i. e.*, one who engages the services of other persons. The employee is one who works for hire for another. The employment is the contract of service between the employer and the employee whereunde the employee agrees to serve the employer subject to his control and supervision".

It is further held that—

There is a well understood distinction between a workman and between contract for service and contract of service. In Stround's Judicial Dictionary (3rd Edn., Vol. I, p. 616), the distinction between a contractor and workman is brought out in bold relief in the following manner:

> "Of course, every person who makes an agreement with another for the doing of work is a contractor, in a general sense: but as used in the Workmen's Compensation Act, 1897 (60 and 61 Vict. C 37), S.4 'contractor, and workman have come to have a more restricted and distinctive meaning, and 'contractor' means 'one who makes an agreement to carry out certain works pecified, but not on a contract of service."

The same idea is repeated in a different terminology thus:

> "A 'contractor' is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the details of the work.

There is, therefore, a clear-cut distinction between a contractor and workman. The identifying mark of the latter is that he should be under the control and supervision of the employer in respect of the details of the work."

It is further observed that—

"There is no reason why the test laid down by this Court in the context of the definition of "workman under the Industrial Disputes Act, 1947, cannot be invoked or applied for ascertaining whether a person is a "worker" under the Act.

A worker under the definition means a person employed, directly or through an agency. In either case there is a contract of employment between the management and persons employed. The expression directly or through any agency in S. 2 (1) of the Factories Act could not include in its fold persons employed by an independent contractor for executing his contractor and over whom the owner or occupier of the factory has no control or power of supervision."

It is further observed that—

"The Scheme of the provisions of the various sections in Chap. VI of the Act indicates that the workmen in the factory are under the direct supervision and control of the management. The conditions of service are statutorily regulated and the management is to conform to the rules laid down at the risk of being penalised for dereliction of any of the statutory duties. The said provisions, therefore, give a clear indication that a worker under the definition of the Act is a person who enters into a contract of service under the management and does not include an independent contractor or his coolies or servants who are not under the control and supervision of the employer".

In 1961 (I) LLJ SC 549 (State of Kerala v. Patel (V.M.) it is held that—

"No doubt the definition of "worker" in S. 2 (1) of the Factories Act is very wide and appears to take in any person employed in any manufacturing process how-so ever his services might have been obtained and whether or not he is remunerated by wages. But the definition

uses the expression "employed". Hence the person must have been employed by the factory. Unless the workers are employed by the factory, there would be no responsibility on the occupier or the manager, if the employment proceeded from some independent contractor. The word "employed" in the definition denotes the relationship of master and servant between the factory and the person employed in the manufacture. The distinction between an independent contractor and a servant is well-known. An independent contractor is charged with a work, and has to produce a particular result; but the manner in which the result is to be achieved is left to him. A servant, on the other hand, may also be charged with the work and asked to produce a particular result, but is subject to the directions of the master as to the manner in which the result is to be achieved. It is possible to take the view that the words "employed in" in the definition do not necessarily bring in the element of relationship of master and servant and anyone working in the premises in a manufacturing process would answer the definition. But in view of the decision of the Supreme Court in (1958 II L. L. J. 252) the matter could not be considered to be open".

In 1962 (I) LLJ SC 119 (Shankar Balaji Waje v. State of Maharashtra) it is held that—

"The mere fact that the person rolling bidis has to roll them a particular form can hardly be said to give rise to such a right in the management as can be said to be a right to control the manner of work. Every worker will have to turn out the work in accordance with the specifications. The control of the management, which is a necessary element of the relationship of master and servant, is not directed towards providing or dictating the nature of the article to be produced or the work to be done, but refers to the other incidents having a bearing on the process of work the person carries out in the execution of the work. The manner of work is to be distinguished from the type of work to be performed. In the instant case, the labourer had to produce bidis rolled in a

certain form. How he carried out the work was his own concern and was not controlled by the management, which was concerned only with getting bidis rolled in a particular style with certain contents. It is true that piece-rated workers or part-time workers could be workers within the definition of worker" in the Act but they must be regular workers and not workers who come and work according to their sweet will or they must have, under their contract of service, an obligation to work either for a fixed period or between the fixed hours. The whole conception of service does not fit in well with a "servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master".

From these rulings the main principles which are deduceable are that to prove the relationship of master and servant or employer and employee, it must be established that the alleged person is working under the employer as a person employed for a particular work, and further it must be proved that the employer has control and supervision over his work. The mere fact of a person doing the work as per the specifications fixed by the employer cannot itself be sufficient to establish the relationship of master and servant or employer and employee. Bearing these principles in mind, now I will proceed to appreciate the evidence of W.W.1, Smt. B. Sharada, and M. W. 1, Sri Pundalik V. Shenoy, on whose evidence rests the decision of the above point.

18. W.W.1 deposed that along with the beedies the company also supplies labels, wrappers, paste, gunny bag and jute thread. Except for the jute thread the other articles are supplied to her. The jute thread is supplied once a week. She further stated that they have to perform the work according to the instructions of the company. If the work is not performed as per the instructions of the company, then they will not be supplied beedies for about a week. If the labelling and wrapping of beedies is not proper, then they ask them to do it again properly. M.W. 1 also admitted in examination-in-chief at page 5 that if the wrapping labelling is not done according to their specifications they do not give any work to them. He further stated at page 6 in cross-examination that all the materials that are required for wrapping and labelling beedies they supply them to outsiders, i.e., to those who wrap beedies. Their own workers deliver these materials

at their homes. Similarly, the labelled and wrapped beedies are brought from their homes by their workers. They have a specific system for wrapping and labelling and according to their specifications they have to wrap and lable their beedies. In my view, the fact that labelling and wrapping materials are provided to such outside persons for packing and labelling of beedies and that such outside persons perform the work of packing and labelling of beedies as per the specifications fixed by the second party, cannot render such persons as employees of the second party, Because there is no documentary evidence to the effect that they are employed by the second party to do the said work. The evidence of M.W. 1, on the other hand, is to the effect that they get done the wrapping and labelling of beedies by contractors, and that their maistry does not visit to check the work of the contractor. They have no control over the contractors, and that they do not supervise the work of outsiders. This is to be remarked here that the work being got done by the contractors is made out by the Register of Payment of Wages which was called for by the first party from the second party during the course of arguments. The entries at page 113 on this Register are in the name of Sri Sesu Shetty, Alke Saheb's Compound. Under his name of B. Sharada appears and her signature is found in token of the receipt of the wages, and this Sesu Shetty appears to be the father of Smt. B. Sharada. Because in her deposition as W.W. 1 she has shown her father's name as Sri Sesu Shetty. Therefore, it can be inferred from these entries that Sri Sesu Shetty is the contractor and Smt. B. Sharada, W. W. 1, being his daughter is working under him as packer and labeller of the beedies of Bharat Beedi Works. This fact of the second party getting done the packing and labelling of the beedies by outside contractors as spoken to by M.W 1 cannot be said to be an exaggeration or an afterthought; because from the evidence of W W. 3, Sri Kantilal Patel, who has shown himself to be the manager of Jaswantlal Prahladbhai and Co., Mangalore, it is apparent that the business of their company is to manufacture and sell beedies, and that in Mangalore District also they are getting the beedies rolled for their company. He deposed that the beedies which are rolled are labelled and wrapped To the contractor they pay at the rate of Rs. 7-50 for one lakh of beedies for labelling and wrapping. He has stated that actually he does not know what the contractor pays to the workers for labelling and wrapping of beedies. Their beedies are labelled and wrapped in Mangalore proper and in Ullal also. They do not pay bonus to the contractor. They have only one contractor. His

name is Lohidas who is their neighbour at Kankanady. At Ullal they have a seperate contractor by name Sunder. He resides at Ullal.

14. At page 114 of the Payment of Wages Register at the top the name of Sri Hoovayya Shetty, Doomanna Shetty Compound Saibarhithlu, is entered and under his name some woman Seethu has signed in token of receipt of the wages. At page 111 the name of Sri Koosa Shetty, Ishwara Shetty Compound, Alke is given at the top and under his name some woman by name Rukmini has signed in token of the receipt of the wages. Thus the perusal of this Register shows that there are many other male persons whose names are mentioned at the top of the pages and under their names some persons have signed in token of receipt of wages. This register which is now marked as Exhibit C, 1 during the passing of the award bears out the testimony of M.W. 1 as to their getting done packing and labelling of beedies by outside contractors. Though W.W. 1 has stated that when they require leave they have to submit a leave application a week in advance to the company yet this fact was flatly denied by M.W. 1. She further stated that once a week a supervisor from the company comes to supervise their work. This fact was also denied by M.W. 1 and M.W 1 has denied to have any supervision or control over the work of such outside workers. On the mere testimoy of W.W. 1 that the second party has supervision and control over their work and time through their supervisor, it cannot be held that such persons are workers under the second party. The Register marked as Exhibit C. 1 which was called for by the first party belies their case as to their being the workers under the second party. In view of the discussion made above, I come to the conclusion that such outside persons who are doing labelling and packing of beedies of Bharath Beedi Works under different contractors whose name find place in the Register marked as Exhibit C. 1 are not the persons employed by the second party, and further that the second party has no supervision or control over their work and as such they cannot be treated as workman of the Bharath Beedi Works within the definition of workmen given in Section (2s) of the Industrial Disputes Act, 1947. In view of this conclusion of time, the next question as to the demand for enhancement of piece-rate for packing and labelling being justified or not, does not arise for consideration Consequently, the first part of the points of dispute and the additional issue No. 1 are answered in the terms that the first party failed to prove that there are any

workmen under Bharath Beedi Works, Karkala, South Kanara District, who are wrapping or lebelling beedies on piece-rate basis, and further that the outside workers who are doing packing and labelling of the Bharath Beedies under different contractors are not the workman under the second party, and as such the demand made by the workmen represented by the Beedi Mazdoor Sangh, Felix Pai Bazar, Mangalore as to the enhancement of piece-rate of wrapping and labelling of one lakh of beedies to Rs. 8 is not tenable. In view of this finding, the additional issues 2 and 3 do not survive for consideration, and in view of the finding on the first part of the points of dispute and the additional issue No. 1, the other part of the points of dispute as regards what relief is to be granted, is answered in the terms that the first party is not entitled to any relief and the reference is liable to be rejected.

15. Now I come to the additional issue No. 4 as to 'what' award In view of the finding on the first part of the points of dispute and the additional issue No. 1, I make the following award:—

AWARD

The reference is rejected on the foregoing grounds. The parties shall bear their respective costs of this reference.

Mangalore.
30th April, 1971.

MOHD. HAMEEDUDDIN KHAN,
Presiding Officer,
Labour Court,
Mangalore.